

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- X
SHONECA DAVIS, DAWUD EUDELLE, JACLYN
PAGNOTTA, and DAVID POMALES, individually and on
behalf of all others similarly situated, and

KENNETH FINGERMAN,

Plaintiffs,

- against -

ABERCROMBIE & FITCH CO., ABERCROMBIE &
FITCH STORES, INC., ABERCROMBIE & FITCH
TRADING CO., d/b/a Abercrombie and Fitch, Abercrombie,
and Hollister and Ruehl,

Defendants.

----- X
08 Civ. 01859 (PKC)

ECF CASE

DECLARATION OF
DEBRA L. RASKIN

DEBRA L. RASKIN, under penalty of perjury pursuant to 28 U.S.C. § 1746,
declares:

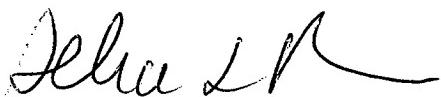
1. I am a member of the firm Vladeck, Waldman, Elias & Engelhard, P.C.,
attorneys for plaintiffs Shoneca Davis ("Davis"), Dawud Eudelle ("Eudelle"), JacLyn Panotta
("Pagnotta"), and David Pomales ("Pomales") (collectively "class plaintiffs"), individually and
on behalf of all others similarly situated; and plaintiff Kenneth Fingerman ("Fingerman"). I
submit this declaration in support of Class Plaintiffs' Motion for Preliminary Certification
Pursuant to the Fair Labor Standards Act, for Court-Facilitated Notice to Similarly Situated
Persons, and for Expedited Discovery.

2. Attached hereto as Exhibit 1 are lists of the New York and New Jersey
locations of the stores Abercrombie & Fitch, Abercrombie, Hollister, and Ruehl, printed from the
stores' websites on July 8, 2008.

3. Attached hereto as Exhibit 2 is a copy of a letter sent by facsimile from defendants to Judge Castel, dated May 7, 2008.

4. Attached hereto as Exhibit 3 is a copy of a Department of Labor Opinion Letter, FLSA 2006-30, dated September 8, 2006.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 8, 2008 in New York, New York.



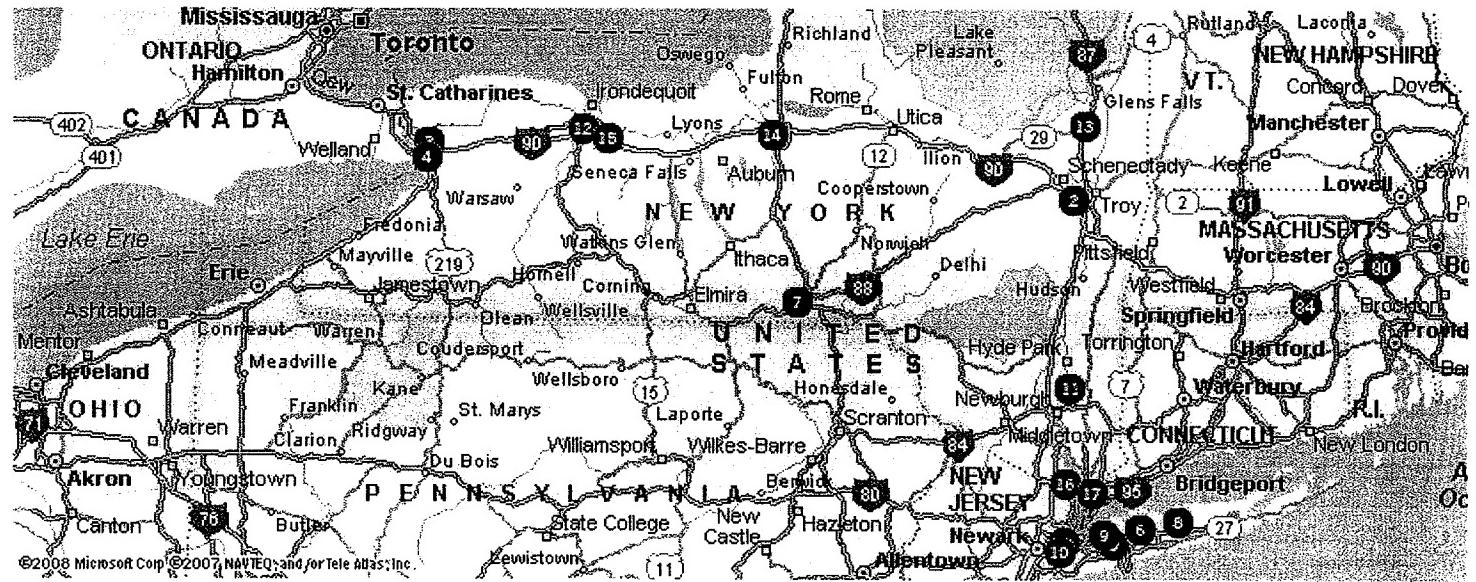
DEBRA L. RASKIN

Abercrombie & Fitch

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Abercrombie & Fitch

All Stores within New York



LOCATION

1. Fifth Avenue (Flagship)
720 Fifth Avenue
New York, NY 10019
212-306-0936

2. Crossgates
One Crossgates Mall Rd. Space # N202
Albany, NY 12203
518-869-4896

3. Boulevard
1225 Niagara Falls Blvd
Amherst, NY 14226
716-832-6573

CURRENT HOURS

Monday:	10:00 AM - 8:00 PM
Tuesday:	10:00 AM - 8:00 PM
Wednesday:	10:00 AM - 8:00 PM
Thursday:	10:00 AM - 8:00 PM
Friday:	10:00 AM - 8:00 PM
Saturday:	10:00 AM - 8:00 PM
Sunday:	12:00 PM - 6:00 PM
Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM
Monday:	10:00 AM - 6:00 PM
Tuesday:	10:00 AM - 9:00 PM
Wednesday:	10:00 AM - 9:00 PM
Thursday:	10:00 AM - 9:00 PM
Friday:	10:00 AM - 9:00 PM
Saturday:	10:00 AM - 9:00 PM
Sunday:	11:00 AM - 6:00 PM

Abercrombie & Fitch

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4. Walden Galleria
 196 Walden Galleria Space # L-214
 Buffalo, NY 14225
 716-685-6693

Monday: 10:00 AM - 9:30 PM
 Tuesday: 10:00 AM - 9:30 PM
 Wednesday: 10:00 AM - 9:30 PM
 Thursday: 10:00 AM - 9:30 PM
 Friday: 10:00 AM - 9:30 PM
 Saturday: 10:00 AM - 9:30 PM
 Sunday: 10:00 AM - 7:00 PM

5. Roosevelt Field
 630 Old Country Road, Space 2061
 Garden City, NY 11530
 516-739-4686

Monday: 10:00 AM - 9:30 PM
 Tuesday: 10:00 AM - 9:30 PM
 Wednesday: 10:00 AM - 9:30 PM
 Thursday: 10:00 AM - 9:30 PM
 Friday: 10:00 AM - 9:30 PM
 Saturday: 10:00 AM - 9:30 PM
 Sunday: 11:00 AM - 7:00 PM

6. Walt Whitman
 160 Walt Whitman Rd. Space # 1101
 Huntington Station, NY 11746
 631-673-5280

Monday: 10:00 AM - 9:30 PM
 Tuesday: 10:00 AM - 9:30 PM
 Wednesday: 10:00 AM - 9:30 PM
 Thursday: 10:00 AM - 9:30 PM
 Friday: 10:00 AM - 9:30 PM
 Saturday: 10:00 AM - 9:30 PM
 Sunday: 11:00 AM - 7:00 PM

7. Oakdale
 601-635 Harry L Drive
 Johnson City, NY 13790
 607-729-2821

Monday: 10:00 AM - 9:00 PM
 Tuesday: 10:00 AM - 9:00 PM
 Wednesday: 10:00 AM - 9:00 PM
 Thursday: 10:00 AM - 9:00 PM
 Friday: 10:00 AM - 9:00 PM
 Saturday: 10:00 AM - 9:00 PM
 Sunday: 11:00 AM - 7:00 PM

8. Smith Haven
 313 Smith Haven Mall, Routes 25 and 347
 Lake Grove, NY 11755
 631-265-2445

Monday: 10:00 AM - 9:30 PM
 Tuesday: 10:00 AM - 9:30 PM
 Wednesday: 10:00 AM - 9:30 PM
 Thursday: 10:00 AM - 9:30 PM
 Friday: 10:00 AM - 9:30 PM
 Saturday: 10:00 AM - 9:30 PM
 Sunday: 11:00 AM - 6:00 PM

9. Manhasset
 1950 Northern Blvd.
 Manhasset, NY 11030
 516-869-6960

Monday: 10:00 AM - 7:00 PM
 Tuesday: 10:00 AM - 7:00 PM
 Wednesday: 10:00 AM - 7:00 PM
 Thursday: 10:00 AM - 8:00 PM
 Friday: 10:00 AM - 7:00 PM
 Saturday: 10:00 AM - 7:00 PM

Abercrombie & Fitch

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10. South Street Seaport
199 Water Street
New York, NY 10038
212-809-9000

Sunday: 12:00 PM - 6:00 PM
Monday: 10:00 AM - 9:00 PM
Tuesday: 10:00 AM - 9:00 PM
Wednesday: 10:00 AM - 9:00 PM
Thursday: 10:00 AM - 9:00 PM
Friday: 10:00 AM - 9:00 PM
Saturday: 10:00 AM - 9:00 PM
Sunday: 11:00 AM - 8:00 PM

11. Poughkeepsie
2001 South Road, Space A212
Poughkeepsie, NY 12601
845-298-4952

Monday: 10:00 AM - 9:30 PM
Tuesday: 10:00 AM - 9:30 PM
Wednesday: 10:00 AM - 9:30 PM
Thursday: 10:00 AM - 9:30 PM
Friday: 10:00 AM - 9:30 PM
Saturday: 10:00 AM - 9:30 PM
Sunday: 11:00 AM - 6:00 PM

12. Marketplace
171 Miracle Mile Drive
Rochester, NY 14623
585-272-1670

Monday: 10:00 AM - 9:30 PM
Tuesday: 10:00 AM - 9:30 PM
Wednesday: 10:00 AM - 9:30 PM
Thursday: 10:00 AM - 9:30 PM
Friday: 10:00 AM - 9:30 PM
Saturday: 10:00 AM - 9:30 PM
Sunday: 11:00 AM - 6:00 PM

13. Wilton
3065 Route 50, Space # E22
Saratoga Springs, NY 12866
518-581-0648

Monday: 10:00 AM - 9:30 PM
Tuesday: 10:00 AM - 9:30 PM
Wednesday: 10:00 AM - 9:30 PM
Thursday: 10:00 AM - 9:30 PM
Friday: 10:00 AM - 9:30 PM
Saturday: 10:00 AM - 9:30 PM
Sunday: 11:00 AM - 6:00 PM

14. Carousel
9090 Carousel Center Rd Space F119
Syracuse, NY 13290
315-466-9137

Monday: 10:00 AM - 9:30 PM
Tuesday: 10:00 AM - 9:30 PM
Wednesday: 10:00 AM - 9:30 PM
Thursday: 10:00 AM - 9:30 PM
Friday: 10:00 AM - 9:30 PM
Saturday: 10:00 AM - 9:30 PM
Sunday: 11:00 AM - 6:00 PM

15. Eastview
7979 Victor-Pittsford Rd.
Victor, NY 14564

Monday: 10:00 AM - 9:30 PM
Tuesday: 10:00 AM - 9:30 PM
Wednesday: 10:00 AM - 9:30 PM
Thursday: 10:00 AM - 9:30 PM
Friday: 10:00 AM - 9:30 PM

Abercrombie & Fitch

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585-223-4520

Saturday: 10:00 AM - 9:30 PM
Sunday: 11:00 AM - 6:00 PM

16. Palisades
2550 Palisades Center Drive
West Nyack, NY 10994
845-348-9108

Monday: 10:00 AM - 9:30 PM
Tuesday: 10:00 AM - 9:30 PM
Wednesday: 10:00 AM - 9:30 PM
Thursday: 10:00 AM - 9:30 PM
Friday: 10:00 AM - 9:30 PM
Saturday: 10:00 AM - 9:30 PM
Sunday: 11:00 AM - 7:00 PM

17. Westchester
125 Westchester Ave. Space # 2040
White Plains, NY 10601
914-686-1406

Monday: 10:00 AM - 9:00 PM
Tuesday: 10:00 AM - 9:00 PM
Wednesday: 10:00 AM - 9:00 PM
Thursday: 10:00 AM - 9:00 PM
Friday: 10:00 AM - 6:00 PM
Saturday: 10:00 AM - 9:00 PM
Sunday: 11:00 AM - 6:00 PM

NOTE

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abercrombie

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abercrombie

all stores within New York



location

1. crossgates
one crossgates mall rd.
albany, ny 12203
518-218-1238

2. boulevard
738 alberta dr., space #609
amherst, ny 14226
716-835-2070

3. walden galleria
one walden galleria, space #d-216
buffalo, ny 14225
716-683-2530

current hours

monday:	10:00 am - 9:30 pm
tuesday:	10:00 am - 9:30 pm
wednesday:	10:00 am - 9:30 pm
thursday:	10:00 am - 9:30 pm
friday:	10:00 am - 9:30 pm
saturday:	10:00 am - 9:30 pm
sunday:	11:00 am - 6:00 pm

monday:	10:00 am - 9:00 pm
tuesday:	10:00 am - 9:00 pm
wednesday:	10:00 am - 9:00 pm
thursday:	10:00 am - 9:00 pm
friday:	10:00 am - 7:00 pm
saturday:	10:00 am - 9:00 pm
sunday:	11:00 am - 6:00 pm

monday:	10:00 am - 9:30 pm
tuesday:	10:00 am - 9:30 pm
wednesday:	10:00 am - 9:30 pm
thursday:	10:00 am - 9:30 pm
friday:	10:00 am - 9:30 pm
saturday:	10:00 am - 9:30 pm
sunday:	10:00 am - 7:00 pm

abercrombie

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4. roosevelt field
 630 old country road
 garden city, ny 11530
 516-294-4595

monday: 10:00 am - 9:30 pm
 tuesday: 10:00 am - 9:30 pm
 wednesday: 10:00 am - 9:30 pm
 thursday: 10:00 am - 9:30 pm
 friday: 10:00 am - 9:30 pm
 saturday: 10:00 am - 9:30 pm
 sunday: 11:00 am - 7:00 pm

5. walt whitman
 160 walt whitman road, space #1090
 huntington station, ny 11746
 631-385-1532

monday: 10:00 am - 9:30 pm
 tuesday: 10:00 am - 9:30 pm
 wednesday: 10:00 am - 9:30 pm
 thursday: 10:00 am - 9:30 pm
 friday: 10:00 am - 9:30 pm
 saturday: 10:00 am - 9:30 pm
 sunday: 11:00 am - 7:00 pm

6. smith haven
 313 smith haven mall, routes 25 and 347
 lake grove, ny 11755
 631-366-1042

monday: 10:00 am - 9:30 pm
 tuesday: 10:00 am - 9:30 pm
 wednesday: 10:00 am - 9:30 pm
 thursday: 10:00 am - 9:30 pm
 friday: 10:00 am - 9:30 pm
 saturday: 10:00 am - 9:30 pm
 sunday: 11:00 am - 6:00 pm

7. poughkeepsie
 2001 south road, space d212
 poughkeepsie, ny 12601
 845-297-4820

monday: 10:00 am - 9:30 pm
 tuesday: 10:00 am - 9:30 pm
 wednesday: 10:00 am - 9:30 pm
 thursday: 10:00 am - 9:30 pm
 friday: 10:00 am - 9:30 pm
 saturday: 10:00 am - 9:30 pm
 sunday: 11:00 am - 6:00 pm

8. carousel
 9090 carousel center road, space b103
 syracuse, ny 13290
 315-425-7693

monday: 10:00 am - 9:30 pm
 tuesday: 10:00 am - 9:30 pm
 wednesday: 10:00 am - 9:30 pm
 thursday: 10:00 am - 9:30 pm
 friday: 10:00 am - 9:30 pm
 saturday: 10:00 am - 9:30 pm
 sunday: 11:00 am - 6:00 pm

9. eastview
 225 eastview mall
 victor, ny 14564
 585-223-6190

monday: 10:00 am - 9:30 pm
 tuesday: 10:00 am - 9:30 pm
 wednesday: 10:00 am - 9:30 pm
 thursday: 10:00 am - 9:30 pm
 friday: 10:00 am - 9:30 pm
 saturday: 10:00 am - 9:30 pm

abercrombie

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10. palisades
2470 palisades center drive
west nyack, ny 10994
845-348-7044

sunday: 11:00 am - 6:00 pm
monday: 10:00 am - 9:30 pm
tuesday: 10:00 am - 9:30 pm
wednesday: 10:00 am - 9:30 pm
thursday: 10:00 am - 9:30 pm
friday: 10:00 am - 9:30 pm
saturday: 10:00 am - 9:30 pm
sunday: 11:00 am - 7:00 pm

11. westchester
125 westchester avenue, space #2250
white plains, ny 10601
914-397-2268

monday: 10:00 am - 9:00 pm
tuesday: 10:00 am - 9:00 pm
wednesday: 10:00 am - 9:00 pm
thursday: 10:00 am - 9:00 pm
friday: 10:00 am - 9:00 pm
saturday: 10:00 am - 9:00 pm
sunday: 11:00 am - 6:00 pm

note

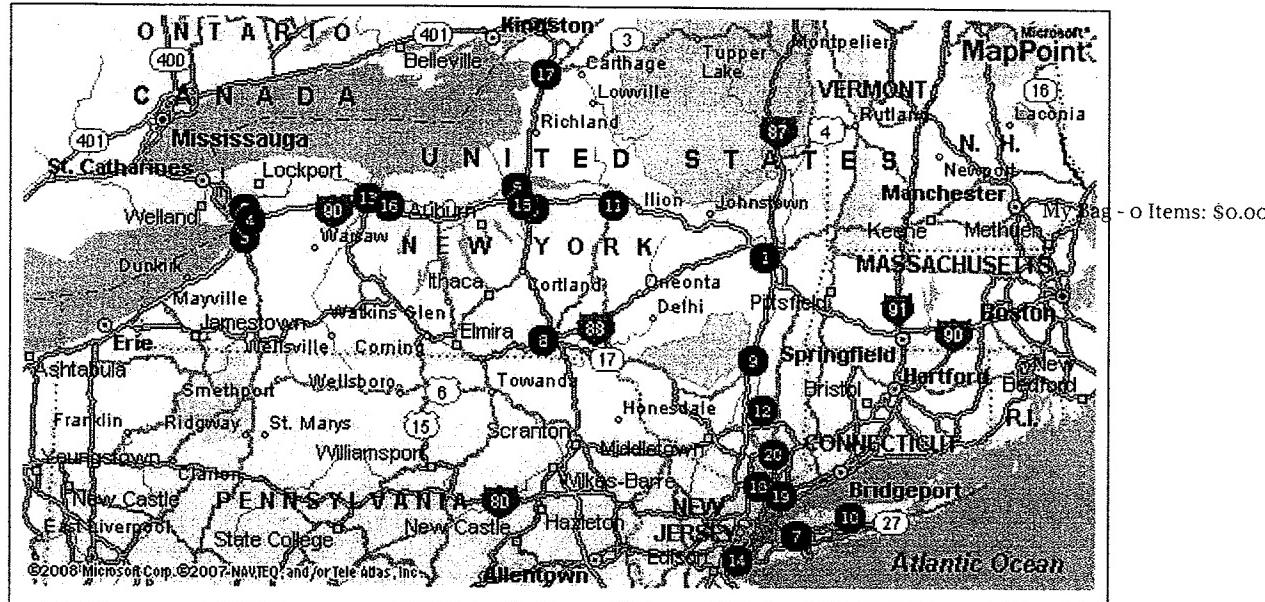
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Hollister-Co. ... Store Locator

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ALL STORES WITHIN NEW YORK

LOCATION	DIRECTIONS	CURRENT HOURS
1. Crossgates One Crossgates Mall Road, Space #B114 Albany, NY 12203 518-464-9153	Get Maps/Directions	Monday: 10:00 AM - 9:30 PM Tuesday: 10:00 AM - 9:30 PM Wednesday: 10:00 AM - 9:30 PM Thursday: 10:00 AM - 9:30 PM Friday: 10:00 AM - 9:30 PM Saturday: 10:00 AM - 9:30 PM Sunday: 11:00 AM - 6:00 PM
2. Boulevard 1213 Niagara Falls Blvd Amherst, NY 14226 716-833-1261	Get Maps/Directions	Monday: 10:00 AM - 9:00 PM Tuesday: 10:00 AM - 9:00 PM Wednesday: 10:00 AM - 9:00 PM Thursday: 10:00 AM - 9:00 PM Friday: 10:00 AM - 9:00 PM Saturday: 10:00 AM - 9:00 PM Sunday: 11:00 AM - 6:00 PM
3. McKinley 3701 McKinley Parkway #704 Blasdell, NY 14219 716-822-2580	Get Maps/Directions	Monday: 10:00 AM - 9:00 PM Tuesday: 10:00 AM - 9:00 PM Wednesday: 10:00 AM - 9:00 PM Thursday: 10:00 AM - 9:00 PM Friday: 10:00 AM - 9:00 PM Saturday: 10:00 AM - 9:00 PM Sunday: 11:00 AM - 6:00 PM
4. Walden Galleria One Walden Galleria Buffalo, NY 14225 716-651-0002	Get Maps/Directions	Monday: 10:00 AM - 9:30 PM Tuesday: 10:00 AM - 9:30 PM Wednesday: 10:00 AM - 9:30 PM Thursday: 10:00 AM - 9:30 PM Friday: 10:00 AM - 9:30 PM Saturday: 10:00 AM - 9:30 PM Sunday: 10:00 AM - 7:00 PM
5. Great Northern 4155 Route 31 Clay, NY 13041 315-652-4973	Get Maps/Directions	Monday: 10:00 AM - 6:00 PM Tuesday: 10:00 AM - 9:00 PM Wednesday: 10:00 AM - 9:00 PM Thursday: 10:00 AM - 9:00 PM Friday: 10:00 AM - 9:00 PM Saturday: 10:00 AM - 9:00 PM Sunday: 11:00 AM - 6:00 PM
6. Shoppingtown 3649 Erie Boulevard East DeWitt, NY 13214 315-446-9622	Get Maps/Directions	Monday: 10:00 AM - 9:30 PM Tuesday: 10:00 AM - 9:30 PM Wednesday: 10:00 AM - 9:30 PM Thursday: 10:00 AM - 9:30 PM Friday: 10:00 AM - 9:30 PM Saturday: 10:00 AM - 9:30 PM Sunday: 11:00 AM - 6:00 PM
7. Roosevelt Field 630 Old Country Road, Space 2045A Garden City, NY 11530 516-741-7345	Get Maps/Directions	Monday: 10:00 AM - 9:30 PM Tuesday: 10:00 AM - 9:30 PM Wednesday: 10:00 AM - 9:30 PM Thursday: 10:00 AM - 9:30 PM Friday: 10:00 AM - 9:30 PM

Hollister Co. ... Store Locator

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8. Oakdale
601-635 Harry L Drive
Johnson City, NY 13790
607-729-0339

[Get Maps/Directions](#)

Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 7:00 PM
Monday:	10:00 AM - 9:00 PM
Tuesday:	10:00 AM - 9:00 PM
Wednesday:	10:00 AM - 9:00 PM
Thursday:	10:00 AM - 9:00 PM
Friday:	10:00 AM - 9:00 PM
Saturday:	10:00 AM - 9:00 PM
Sunday:	11:00 AM - 7:00 PM

9. Hudson Valley
1300 Ulster Avenue
Kingston, NY 12401
845-336-4517

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:00 PM
Tuesday:	10:00 AM - 9:00 PM
Wednesday:	10:00 AM - 9:00 PM
Thursday:	10:00 AM - 9:00 PM
Friday:	10:00 AM - 9:00 PM
Saturday:	10:00 AM - 9:00 PM
Sunday:	11:00 AM - 6:00 PM

10. Smith Haven
313 Smith Haven Mall, Routes 25 and
347
Lake Grove, NY 11755
631-979-2560

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM

11. Sangerstown
Routes 5 & 5A
New Hartford, NY 13413
315-724-7690

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM

12. Poughkeepsie
2001 South Road, Space B201
Poughkeepsie, NY 12601
845-297-2891

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM

13. Marketplace
321 Miracle Mile Drive
Rochester, NY 14623
585-424-6870

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM

14. Staten Island
2655 Richmond Avenue
Staten Island, NY 10314
718-761-2975

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 7:00 PM
Saturday:	10:00 AM - 10:00 PM
Sunday:	11:00 AM - 7:00 PM

15. Carousel
9090 Carousel Center Road
Syracuse, NY 13290
315-475-9730

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM

16. Eastview
7979 Victor Pittsford Road
Victor, NY 14564
585-223-1770

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 5:00 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM

17. Salmon Run
21182 Salmon Run Loop West
Watertown, NY 13601
315-782-0161

[Get Maps/Directions](#)

Monday:	9:30 AM - 5:00 PM
Tuesday:	9:30 AM - 9:00 PM
Wednesday:	9:30 AM - 9:00 PM
Thursday:	9:30 AM - 9:00 PM
Friday:	9:30 AM - 9:00 PM
Saturday:	9:30 AM - 9:00 PM
Sunday:	11:00 AM - 6:00 PM

18. Palisades
2360 Palisades Center Drive, Space E205

West Nyack, NY 10994
845-348-9573

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM

Hollister Co. ... Store Locator

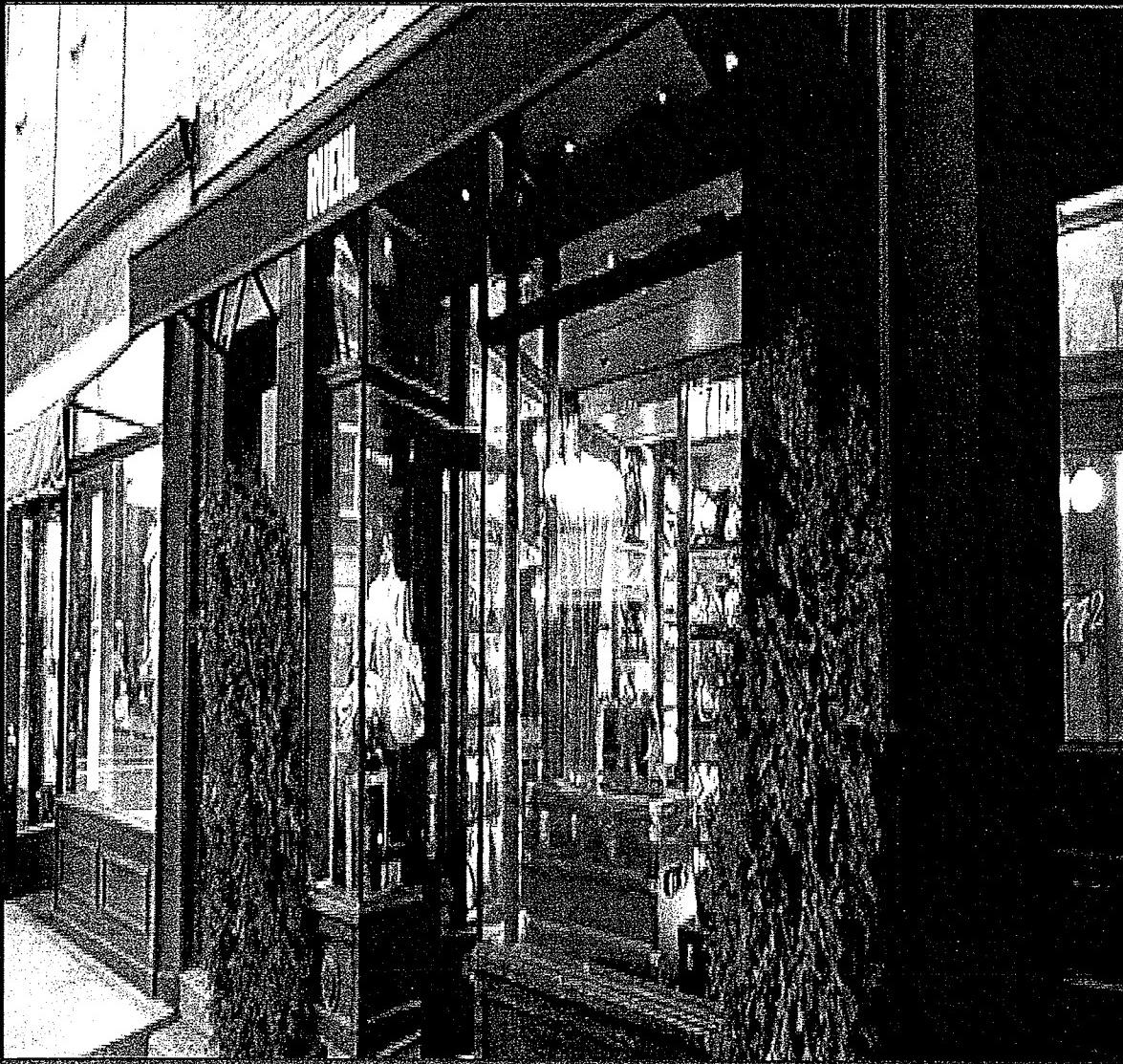
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19. Westchester
125 Westchester Avenue
White Plains, NY 10601
914-949-2691

20. Jefferson Valley
650 Lee Blvd
Yorktown Heights, NY 10598
914-245-2401

[Get Maps/Directions](#)[Get Maps/Directions](#)

Sunday:	11:00 AM - 7:00 PM
Monday:	10:00 AM - 9:00 PM
Tuesday:	10:00 AM - 9:00 PM
Wednesday:	10:00 AM - 9:00 PM
Thursday:	10:00 AM - 9:00 PM
Friday:	10:00 AM - 9:00 PM
Saturday:	10:00 AM - 9:00 PM
Sunday:	11:00 AM - 6:00 PM
Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM

[STORE LISTINGS](#)[SUBSCRIBE](#)[HOME](#)[MENS](#)[WOMENS](#)[THE RUEHL BOOK](#)[PHOTO GALLERY](#)[EAST COAST](#)[MIDWEST](#)[WEST COAST](#)[SOUTH](#)[NEW YORK](#)[VIRGINIA](#)[MARYLAND](#)[MASSACHUSETTS](#)[NEW JERSEY](#)[BLEECKER STREET](#)[ACCESSORIES ONLY](#)[NEW YORK, NY](#)[212-924-8600](#)[ROOSEVELT FIELD](#)[GARDEN CITY, NY](#)[516-218-2113](#)

RUEHL No.925 » STORE_LISTINGS

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Abercrombie & Fitch

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Abercrombie & Fitch

All Stores within New Jersey

**LOCATION**

1. Bridgewater Commons
400 Commons Way
Bridgewater, NJ 08807
908-707-2094

2. Cherry Hill
2000 Rt 38, Suite 722
Cherry Hill, NJ 08002
856-661-1823

3. Monmouth
180 Rt. 35 South
Eatontown, NJ 07724
732-389-9541

CURRENT HOURS

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 10:00 PM
Saturday:	10:00 AM - 10:00 PM
Sunday:	11:00 AM - 7:00 PM
Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM
Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 7:00 PM

Abercrombie & Fitch

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4. Menlo Park
100 Menlo Park #380
Edison, NJ 08837
732-548-0217

Monday: 10:00 AM - 9:30 PM
Tuesday: 10:00 AM - 9:30 PM
Wednesday: 10:00 AM - 9:30 PM
Thursday: 10:00 AM - 9:30 PM
Friday: 10:00 AM - 9:30 PM
Saturday: 10:00 AM - 9:30 PM
Sunday: 11:00 AM - 7:00 PM

5. Freehold Raceway
3710 Route 9
Freehold, NJ 07728
732-294-0060

Monday: 10:00 AM - 9:30 PM
Tuesday: 10:00 AM - 9:30 PM
Wednesday: 10:00 AM - 9:30 PM
Thursday: 10:00 AM - 9:30 PM
Friday: 10:00 AM - 9:30 PM
Saturday: 10:00 AM - 9:30 PM
Sunday: 11:00 AM - 7:00 PM

6. Garden State
D4 Garden State Plaza
Paramus, NJ 07652-2407
201-845-0664

Monday: 10:00 AM - 9:30 PM
Tuesday: 10:00 AM - 9:30 PM
Wednesday: 10:00 AM - 9:30 PM
Thursday: 10:00 AM - 9:30 PM
Friday: 10:00 AM - 9:30 PM
Saturday: 10:00 AM - 9:30 PM
Sunday: Closed

7. Paramus Park
700 Paramus Park, Space #1545
Paramus, NJ 07652
201-225-1578

Monday: 10:00 AM - 9:30 PM
Tuesday: 10:00 AM - 9:30 PM
Wednesday: 10:00 AM - 9:30 PM
Thursday: 10:00 AM - 9:30 PM
Friday: 10:00 AM - 9:30 PM
Saturday: 10:00 AM - 9:30 PM
Sunday: Closed

8. Rockaway
301 Mount Hope Ave. Space 2079
Rockaway, NJ 07866
973-366-9507

Monday: 10:00 AM - 9:30 PM
Tuesday: 10:00 AM - 9:30 PM
Wednesday: 10:00 AM - 9:30 PM
Thursday: 10:00 AM - 9:30 PM
Friday: 10:00 AM - 9:30 PM
Saturday: 10:00 AM - 9:30 PM
Sunday: 11:00 AM - 6:00 PM

9. Short Hills
1200 Morris Turnpike Suite B-133
Short Hills, NJ 07078
973-467-9575

Monday: 10:00 AM - 6:00 PM
Tuesday: 10:00 AM - 9:00 PM
Wednesday: 10:00 AM - 9:00 PM
Thursday: 10:00 AM - 9:00 PM
Friday: 10:00 AM - 9:00 PM
Saturday: 10:00 AM - 7:00 PM

Abercrombie & Fitch

Page 3 of 3

10. Willowbrook
1400 Willowbrook Mall Space # 137
Wayne, NJ 07470
973-256-4165

Sunday: 11:00 AM - 6:00 PM
Monday: 10:00 AM - 9:30 PM
Tuesday: 10:00 AM - 9:30 PM
Wednesday: 10:00 AM - 9:30 PM
Thursday: 10:00 AM - 9:30 PM
Friday: 10:00 AM - 10:00 PM
Saturday: 10:00 AM - 10:00 PM
Sunday: 11:00 AM - 7:00 PM

NOTE

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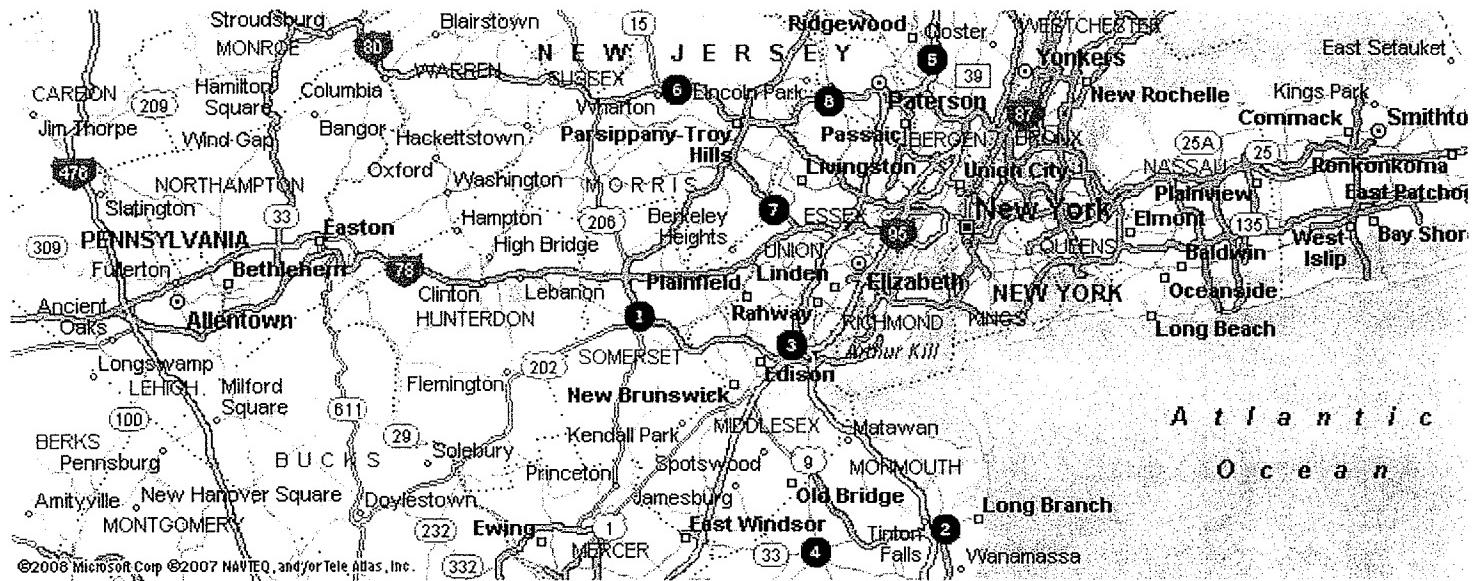
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abercrombie

Page 1 of 2

abercrombie

all stores within New Jersey



location

1. bridgewater commons
400 commons way
bridgewater, nj 08807
908-725-0203

2. monmouth
180 rt. 35 south
eatontown, nj 07724
732-389-4860

3. menlo park
55 parsonage road
edison, nj 08837
732-494-4988

current hours

monday:	10:00 am - 9:30 pm
tuesday:	10:00 am - 9:30 pm
wednesday:	10:00 am - 9:30 pm
thursday:	10:00 am - 9:30 pm
friday:	10:00 am - 10:00 pm
saturday:	10:00 am - 10:00 pm
sunday:	11:00 am - 7:00 pm
monday:	10:00 am - 9:30 pm
tuesday:	10:00 am - 9:30 pm
wednesday:	10:00 am - 9:30 pm
thursday:	10:00 am - 9:30 pm
friday:	10:00 am - 9:30 pm
saturday:	10:00 am - 9:30 pm
sunday:	11:00 am - 7:00 pm
monday:	10:00 am - 9:30 pm
tuesday:	10:00 am - 9:30 pm
wednesday:	10:00 am - 9:30 pm
thursday:	10:00 am - 9:30 pm
friday:	10:00 am - 9:30 pm
saturday:	10:00 am - 9:30 pm
sunday:	11:00 am - 7:00 pm

abercrombie

Page 2 of 2

4. freehold raceway
 3710 route 9
 freehold, nj 07728
 732-308-9607

monday: 10:00 am - 9:30 pm
 tuesday: 10:00 am - 9:30 pm
 wednesday: 10:00 am - 9:30 pm
 thursday: 10:00 am - 9:30 pm
 friday: 10:00 am - 9:30 pm
 saturday: 10:00 am - 9:30 pm
 sunday: 11:00 am - 7:00 pm

5. garden state
 d6 garden state plaza
 paramus, nj 07652
 201-845-6270

monday: 10:00 am - 9:30 pm
 tuesday: 10:00 am - 9:30 pm
 wednesday: 10:00 am - 9:30 pm
 thursday: 10:00 am - 9:30 pm
 friday: 10:00 am - 9:30 pm
 saturday: 10:00 am - 9:30 pm
 sunday: closed

6. rockaway
 301 mount hope ave space #2071
 rockaway, nj 07866
 973-366-8101

monday: 10:00 am - 9:30 pm
 tuesday: 10:00 am - 9:30 pm
 wednesday: 10:00 am - 9:30 pm
 thursday: 10:00 am - 9:30 pm
 friday: 10:00 am - 9:30 pm
 saturday: 10:00 am - 9:30 pm
 sunday: 11:00 am - 6:00 pm

7. short hills
 1200 morris turnpike, space #208
 short hills, nj 07078
 973-921-2040

monday: 10:00 am - 9:00 pm
 tuesday: 10:00 am - 9:00 pm
 wednesday: 10:00 am - 9:00 pm
 thursday: 10:00 am - 9:00 pm
 friday: 10:00 am - 9:00 pm
 saturday: 10:00 am - 7:00 pm
 sunday: 11:00 am - 6:00 pm

8. willowbrook
 1400 willowbrook mall, space
 wayne, nj 07470
 973-812-8013

monday: 10:00 am - 9:30 pm
 tuesday: 10:00 am - 9:30 pm
 wednesday: 10:00 am - 9:30 pm
 thursday: 10:00 am - 9:30 pm
 friday: 10:00 am - 10:00 pm
 saturday: 10:00 am - 10:00 pm
 sunday: 11:00 am - 7:00 pm

note

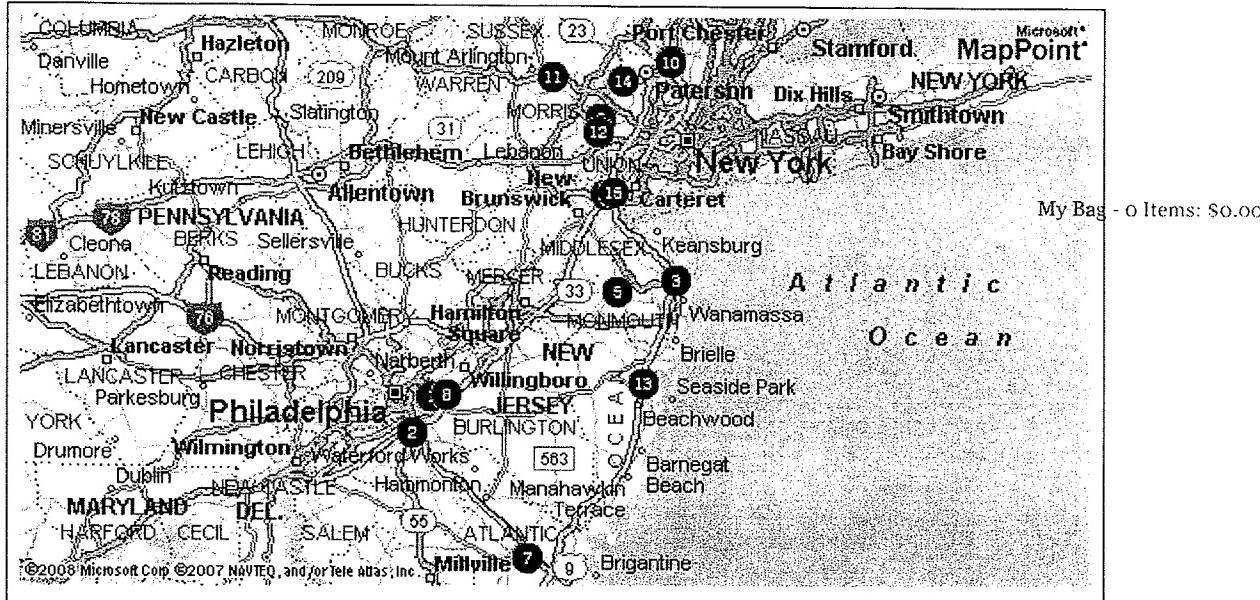
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Hollister Co. ... Store Locator

Page 1 of 2



ALL STORES WITHIN NEW JERSEY

LOCATION	DIRECTIONS	CURRENT HOURS
1. Cherry Hill 2000 Rt 38 Cherry Hill, NJ 08002 856-488-8247	Get Maps/Directions	<p>Monday: 10:00 AM - 9:30 PM Tuesday: 10:00 AM - 9:30 PM Wednesday: 10:00 AM - 9:30 PM Thursday: 10:00 AM - 9:30 PM Friday: 10:00 AM - 9:30 PM Saturday: 10:00 AM - 9:30 PM Sunday: 11:00 AM - 6:00 PM</p>
2. Deptford 1750 Deptford Center Road Deptford, NJ 08096 856-848-3752	Get Maps/Directions	<p>Monday: 10:00 AM - 9:30 PM Tuesday: 10:00 AM - 9:30 PM Wednesday: 10:00 AM - 9:30 PM Thursday: 10:00 AM - 9:30 PM Friday: 10:00 AM - 10:00 PM Saturday: 10:00 AM - 10:00 PM Sunday: 11:00 AM - 7:00 PM</p>
3. Monmouth 180 Rt 35 South Eatontown, NJ 07724 732-544-3641	Get Maps/Directions	<p>Monday: 10:00 AM - 9:30 PM Tuesday: 10:00 AM - 9:30 PM Wednesday: 10:00 AM - 9:30 PM Thursday: 10:00 AM - 9:30 PM Friday: 10:00 AM - 9:30 PM Saturday: 10:00 AM - 9:30 PM Sunday: 11:00 AM - 7:00 PM</p>
4. Menlo Park 100 Menlo Park Edison, NJ 08837 732-494-4928	Get Maps/Directions	<p>Monday: 10:00 AM - 9:30 PM Tuesday: 10:00 AM - 9:30 PM Wednesday: 10:00 AM - 9:30 PM Thursday: 10:00 AM - 9:30 PM Friday: 10:00 AM - 9:30 PM Saturday: 10:00 AM - 9:30 PM Sunday: 11:00 AM - 7:00 PM</p>
5. Freehold Raceway 3710 Route 9 Freehold, NJ 07728 732-761-8920	Get Maps/Directions	<p>Monday: 10:00 AM - 9:30 PM Tuesday: 10:00 AM - 9:30 PM Wednesday: 10:00 AM - 9:30 PM Thursday: 10:00 AM - 9:30 PM Friday: 10:00 AM - 9:30 PM Saturday: 10:00 AM - 9:30 PM Sunday: 11:00 AM - 7:00 PM</p>
6. Livingston 112 Eisenhower Parkway Livingston, NJ 07039 973-992-7054	Get Maps/Directions	<p>Monday: 10:00 AM - 9:30 PM Tuesday: 10:00 AM - 9:30 PM Wednesday: 10:00 AM - 9:30 PM Thursday: 10:00 AM - 9:30 PM Friday: 10:00 AM - 9:30 PM Saturday: 10:00 AM - 9:30 PM Sunday: 11:00 AM - 6:00 PM</p>
7. Hamilton 4403 Black Horse Pike Mays Landing, NJ 08330 609-484-8697	Get Maps/Directions	<p>Monday: 10:00 AM - 9:30 PM Tuesday: 10:00 AM - 9:30 PM Wednesday: 10:00 AM - 9:30 PM Thursday: 10:00 AM - 9:30 PM Friday: 10:00 AM - 9:30 PM</p>

Hollister Co. ... Store Locator

Page 2 of 2

8. Moorestown
400 Route 38
Moorestown, NJ 08057
856-778-0197

[Get Maps/Directions](#)

Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM
Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM
Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 6:00 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	Closed

9. Paramus Park
700 Paramus Park Sp1070
Paramus, NJ 07652
201-262-5200

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	Closed

10. Garden State
M3 GARDEN STATE PLAZA
PARAMUS, NJ 07652
201-291-1877

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	Closed

11. Rockaway
301 Mount Hope Avenue
Rockaway, NJ 07866
973-361-4571

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM

12. Short Hills
1200 Morris Turnpike, Spc B105
Short Hills, NJ 07078
973-564-8530

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:00 PM
Tuesday:	10:00 AM - 9:00 PM
Wednesday:	10:00 AM - 9:00 PM
Thursday:	10:00 AM - 9:00 PM
Friday:	10:00 AM - 9:00 PM
Saturday:	10:00 AM - 7:00 PM
Sunday:	11:00 AM - 6:00 PM

13. Ocean County
1201 Hooper Avenue
Toms River, NJ 08753
732-286-1304

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 6:00 PM

14. Willowbrook
2058 Willowbrook Mall
Wayne, NJ 07470
973-812-1012

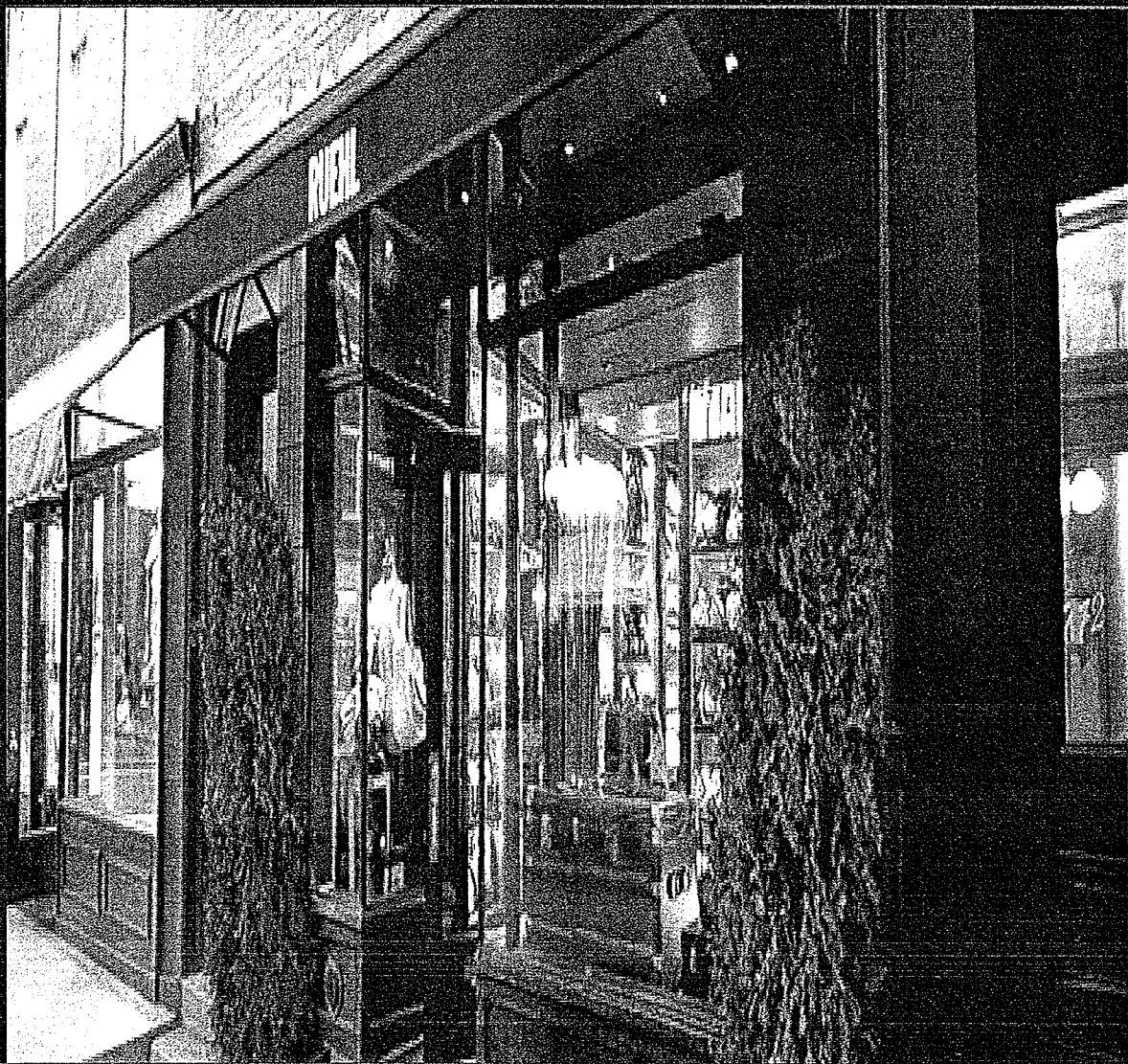
[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 10:00 PM
Saturday:	10:00 AM - 10:00 PM
Sunday:	11:00 AM - 7:00 PM

15. Woodbridge
277 Woodbridge Center Drive, space
#2630
Woodbridge, NJ 07095
732-634-8163

[Get Maps/Directions](#)

Monday:	10:00 AM - 9:30 PM
Tuesday:	10:00 AM - 9:30 PM
Wednesday:	10:00 AM - 9:30 PM
Thursday:	10:00 AM - 9:30 PM
Friday:	10:00 AM - 9:30 PM
Saturday:	10:00 AM - 9:30 PM
Sunday:	11:00 AM - 7:00 PM

**STORE LISTINGS**[SUBSCRIBE](#)[HOME](#)[MENS](#)[WOMENS](#)[THE RUEHL BOOK](#)[PHOTO GALLERY](#)**EAST COAST**[MIDWEST](#)[WEST COAST](#)[SOUTH](#)**NEW JERSEY**[NEW YORK](#)[VIRGINIA](#)[MARYLAND](#)[MASSACHUSETTS](#)**GARDEN STATE**[PARAMUS, NJ](#)[201-845-8108](#)[FREEHOLD RACEWAY](#)[FREEHOLD, NJ](#)[732-800-3019](#)

RUEHL No.925 » STORE_LISTINGS

Page 2 of 2



Vorys, Sater, Seymour and Pease LLP
Legal Counsel

52 East Gay St.
PO Box 1008
Columbus, OH 43216-1008
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www.vorys.com
Founded 1909

Sandra J. Anderson
Direct Dial (614) 464-6405
Facsimile (614) 719-4875
E-Mail - SJAnderson@vorys.com

May 7, 2008

VIA FACSIMILE (212-805-7949)

The Honorable Judge P. Kevin Castel
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: *Davis, et al. v. Abercrombie & Fitch Co., et al.*
Case No. 08 CV 01859
Pre-Motion Conference

Dear Judge Castel:

We represent the Defendants in the above matter, which has been scheduled for an Initial Pretrial Conference on May 9, 2008, now re-set for 10:15 a.m. In the joint letter to the Court dated May 2, 2008, the parties, pursuant to the Court's rules, listed proposed motions. By agreement, the parties respectfully request leave to submit letters today responding to each other's proposed motions. In the interest of expediting a schedule for briefing motions, the parties ask that the Court consider these submissions in lieu of the exchange the Court requires for pre-motion conferences.

Pursuant to the parties' joint letter of May 2, 2008, Defendants understand that Plaintiffs intend to file a motion for preliminary certification and Court-facilitated notice to similarly-situated employees pursuant to the FLSA, 29 U.S.C. § 216(b). Defendants intend to oppose such motion for preliminary certification on several grounds, including the following:

- The Court lacks subject matter jurisdiction over the FLSA claim (First Cause of Action of Plaintiffs' Complaint) because Defendants have served a Rule 68 Offer of Judgment that affords complete relief to the named plaintiffs. Accordingly, no case or controversy exists, and Plaintiffs' FLSA collective action allegations are moot. Abrams v. Interco Inc., 719 F.2d 23, 32 (2nd Cir. 1983); Ward v. Bank of New York, 455 F. Supp. 2d 262, 266-67 (S.D.N.Y. 2006); Darboe v. Goodwill Industries of Greater NY & Northern NJ, Inc., 485 F. Supp. 2d 221, 223 (E.D.N.Y. 2007).

WASHINGTON
1828 L St. NW
Eleventh Floor
Washington, DC 20036-5109
202.467.8800

CLEVELAND
1375 East Ninth St.
2100 One Cleveland Center
Cleveland, OH 44114-1724
216.479.6100

CINCINNATI
221 East Fourth St.
Suite 2000, Atrium Two
PO Box 0236
Cincinnati, OH 45201-0236
513.723.4000

ALEXANDRIA
277 South Washington St.
Suite 310
Alexandria, VA 22314
703.897.6999

AKRON
106 South Main St.
Suite 1100
Akron, OH 44308
330.208.1000

VORYS

Legal Counsel

The Honorable Judge P. Kevin Castel
May 7, 2008
Page 2

- Plaintiffs are not similarly-situated among themselves. As just one example, Plaintiffs Pamoles and Eudelle followed Abercrombie's procedures in recording their work time. Plaintiffs Davis and Pagnotta did not. Thus, Defendants have an estoppel defense to certain FLSA allegations of Plaintiffs Davis and Pagnotta that they may not have as to Plaintiffs Pamoles and Eudelle. See, e.g., Forrester v. Roth's IGA Foodliner, 646 F.2d 413 (9th Cir. 1981). Because of the individual defenses to two of the four-named Plaintiffs, there is a failure of an essential element to preliminary certification: common defenses among the allegedly similarly-situated employees. The individualized defenses applicable to the named plaintiffs, thus, prevent preliminary certification.
- There is a dissimilarity of job duties among the putative class that prevents preliminary certification. Some of the loss prevention agents performed duties that meet the FLSA overtime pay exemption for "administrative" employees. See U.S. Department of Labor Opinion Letter FLSA 2006-30 (available at http://www.dol.gov/esa/whd/opinion/FLSA/2006/2006_09_08_30_FLSA.htm.); West v. Border Foods, Inc., 2006 WL 1892527 (D. Minn. July 10, 2006). As another example, loss prevention agents at the Fifth Avenue store perform different duties than do loss prevention agents at other stores in New Jersey and New York. A number of loss prevention agents are stationed permanently at the Fifth Avenue store, whereas a number of agents elsewhere in New York/New Jersey are each responsible for several different stores performing duties akin to those described in the U.S. Department of Labor Opinion Letter. Thus, preliminary certification of the purported class is not proper.

Accordingly, Defendants will oppose Plaintiff's motion for preliminary certification as a collective action and Court-facilitated notice.

Respectfully submitted,



Sandra J. Anderson

SJA/lhr

cc: Debra L. Raskin, Esq. (via fax 212-221-3172)
Howard M. Miller, Esq. (via e-mail)



Vorys, Sater, Seymour and Pease LLP
Legal Counsel

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Columbus, OH 43216-1008
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Founded 1909

Date: May 7, 2008

TO: Debra L. Raskin, Esq. **Fax No.** (212) 221-3172
of: Vladeck, Waldman, Elias & Engelhard, P.C. **Tel No.** (212) 403-7300

FROM: Sandra J. Anderson, Esq. **Direct Dial No.** (614) 464-6405
Direct Fax No. (614) 719-4875

Number of pages (including this sheet): 3 pages

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U.S. Department of Labor
 Employment Standards Administration
 Wage and Hour Division
 Washington, D.C. 20210

FLSA2006-30

September 8, 2006

Dear Name*:

This is in response to your request for an opinion concerning whether Loss Prevention Managers (LPMs) employed by your client, a large retail business operating over 200 department stores, qualify for the administrative exemption under Fair Labor Standards Act (FLSA) section 13(a)(1) (copy enclosed). Based on a review of the information provided, it is our opinion that LPMs qualify for the administrative exemption.

You state that the primary function of an LPM is the effective implementation of a loss prevention and shortage control program for the store where the LPM is employed. The effective implementation of a loss prevention and shortage control program is an essential ingredient for the profitability of your client's retail stores. This is a significant matter that frequently determines the success or failure of a store. In this capacity, the LPM is the primary communicator between the store and the Regional Loss Prevention Manager on specific issues and concerns, and serves as the co-chair of the store's Loss Prevention and Safety Committee. As co-chair of this committee, the LPM ensures training standards for associates regarding emergency procedures, robbery, fire, etc. The LPM reports directly to the Store Manager and the Regional Loss Prevention Manager, and provides both with current reports and information.

The LPM utilizes company programs and also develops complementary store-specific programs to meet or exceed the store's shortage goals. In developing the Store Shortage Reduction Action Plan, the LPM analyzes inventory shortage results, allocates store Loss Prevention resources to successfully reduce inventory shortage, focuses prevention activities on high shortage departments, identifies paperwork control weaknesses and implements procedures to correct them, conducts audits for compliance and ensures store follow up on price accuracy initiatives, and sells/partners with store management to implement the plan. The LPM investigates the causes of inventory shortage (e.g., complex "paperwork" problem or theft) and then selects appropriate steps to solve the problem. Once the appropriate course of action is selected, the LPM pursues that course of action to a successful completion. In developing cash shortage controls and programs to manage and reduce loss, the LPM develops an appropriate training and awareness program to reduce error, reviews cash discrepancies to keep store within allowable guidelines, and identifies cash registers with unacceptable shortages. Also, the LPM regularly reviews loss prevention exception reports for signs of dishonesty.

Depending on the size of the store, its history, and other factors, an LPM may supervise one or more Loss Prevention Associates (LPAs).¹ The LPM guides the store management and LPAs in conducting investigations, training, and addressing shortage related issues. In providing direction for LPAs, the LPM interviews all LPA candidates and conducts and supervises

¹ Notwithstanding the LPM's supervisory authority, you asked, for purposes of this opinion request, that we address only the applicability of the administrative exemption.

training for LPAs on a continual basis. In developing store associate awareness and support programs, the LPM promotes customer approach programs and ensures that all associates receive loss prevention awareness training, including the distribution of associate awareness material. One aspect of these programs deals with how to approach customers in a way that is legal and appropriate. In ensuring that programs to prevent and detect internal theft are followed, the LPM, in consultation with management, determines what internal investigations to pursue and when to conduct interviews, and ascertains prosecutable cases. Also, the LPM must be proficient in covert camera installation and the operation of photographic and video equipment. The LPM is responsible for taking appropriate legal steps with respect to shoplifters, including apprehensions of suspects and the filing of police reports, but this duty arises on average once or twice per week. In this regard, LPMs are directed to focus their efforts on deterrence, training, and associate awareness. The LPM also has responsibilities, in conjunction with the human resources department, for the prompt and thorough investigation of harassment allegations. With respect to all of the above job functions, the LPM consults with and provides expert advice to store management. The LPM works in an independent manner and his or her typical work day consists of performing office or non-manual work. The LPM is paid in excess of \$455 per week on a salary basis.

FLSA section 13(a)(1) provides a complete minimum wage and overtime pay exemption for “any employee employed in a bona fide executive, administrative, or professional capacity,” as those terms are defined in 29 C.F.R. Part 541. An employee may qualify for exemption if all of the pertinent tests relating to duties and salary are met. Please note that revisions to 29 C.F.R. Part 541 were published as a final rule in the Federal Register on April 23, 2004 (69 Fed. Reg. 22,122) and became effective on August 23, 2004 (copy enclosed).

As stated in 29 C.F.R. § 541.200(a), the term “employee employed in a bona fide administrative capacity” means “any employee”:

- (1) Compensated on a salary or fee basis at a rate of not less than \$455 per week . . . ;
- (2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and
- (3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

In the context of the administrative exemption,

[t]he phrase “directly related to the management or general business operations” refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.

29 C.F.R. § 541.201(a).

Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities.

29 C.F.R. § 541.201(b).

To qualify for the administrative exemption, an employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term "matters of significance" refers to the level of importance or consequence of the work performed.

29 C.F.R. § 541.202(a).

The phrase "discretion and independent judgment" must be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the business; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of a particular segment of the business; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the company on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term business objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances.

29 C.F.R. § 541.202(b). Section 541.202(c) further notes that "[t]he exercise of discretion and independent judgment implies that the employee has the authority to make an independent choice, free from immediate direction or supervision." As the preamble to the final rule explained, 69 Fed. Reg. 22,143 (Apr. 23, 2004) (copy enclosed), federal courts generally find that employees who meet at least two or three of the indicators mentioned in 29 C.F.R. § 541.202(b) are exercising discretion and independent judgment, although a case-by-case analysis is required.

The administrative exemption thus has requirements pertaining both to the “type of work performed” and to “the level of importance or consequence of the work performed.” 69 Fed. Reg. 22,139 (copy enclosed). With regard to the type of work performed, the preamble explains that “the administrative exemption covers only employees performing a particular type of work—work related to assisting with the running or servicing of the business.” *See* 69 Fed. Reg. 22,141. Furthermore:

[T]his exemption is intended to be limited to those employees whose duties relate “to the administrative as distinguished from the ‘production’ operations of a business.” Thus, it relates to employees whose work involves servicing the business itself—employees who “can be described as staff rather than line employees, or as functional rather than departmental heads.”

Id. Although the production versus staff dichotomy is illustrative, rather than dispositive, “it is still a relevant and useful tool in appropriate cases to identify employees who should be excluded from the exemption.” *Id.*

Based on a review of the information provided, we believe that the LPM’s primary duty of effectively implementing a loss prevention and shortage control program by, among other duties, analyzing inventory results, allocating store Loss Prevention resources to successfully reduce inventory shortage, focusing prevention activities on high shortage departments, identifying paperwork control weaknesses and implementing procedures to correct them, conducting audits for compliance and ensuring store follow-up on price accuracy initiatives, reviewing cash discrepancies to keep the store within allowable guidelines, identifying cash registers with unacceptable shortages, and regularly reviewing loss prevention exception reports for signs of dishonesty directly relates to the functional areas of accounting, auditing, and quality control discussed in 29 C.F.R. § 541.201(b). *See* 69 Fed. Reg. 22,140-22,142. The duties performed by the LPM such as interviewing all loss prevention candidates, conducting and supervising training for LPAs on a continual basis, and providing direction for LPAs also directly relate to the functional areas of personnel management and human resources. By ensuring training standards for associates regarding emergency procedures, robbery, fire, etc., as co-chair of the store’s Loss Prevention and Safety Committee, the LPM performs work that is directly related to the functional area of safety and health. Furthermore, as described above, the LPM’s typical work day consists of performing office or non-manual work. Therefore, the LPM’s primary duty involves the “performance of office or non-manual work directly related to the management or general business operations of the employer.” 29 C.F.R. § 541.200(a)(2). *See* Wage and Hour Opinion Letter September 20, 1982 (copy enclosed).

Moreover, we believe that the LPM’s primary duty “includes the exercise of discretion and independent judgment with respect to matters of significance.” 29 C.F.R. § 541.200(a)(3). Working independently shows that the LPM has certain decision-making authority that is “free from immediate direction or supervision.” 29 C.F.R. § 541.202(c). In selecting appropriate steps to address the problem of inventory shortage and pursuing the selected course of action, the LPM compares and evaluates possible courses of conduct, and acts or makes a decision after the various possibilities have been considered as discussed in 29 C.F.R. § 541.202(a). The

LPM's primary duty of implementing the loss prevention and shortage control program for the store and, in certain situations, the LPM's supervisory responsibilities over one or more LPAs demonstrate that the employee "implement[s] management policies or operating practices." 29 C.F.R. § 541.202(b); *see also* 69 Fed. Reg. 22,142-22,144 (copies enclosed). In implementing the loss prevention and shortage control program for the store, the LPM "performs work that affects business operations to a substantial degree" because the effective performance of such duty is essential for the profitability of the store and, in fact, frequently determines the store's success or failure. 29 C.F.R. § 541.202(b). In developing complementary store-specific programs to meet or exceed the store's shortage goals, the LPM "carries out major assignments in conducting the operations of the business." *Id.* In determining what internal investigations to pursue and when to conduct interviews, in ascertaining prosecutable cases, and in investigating harassment allegations, the LPM "investigates and resolves matters of significance on behalf of management." *Id.* In addition, in consulting with and providing expert advice to store management with respect to the loss prevention and shortage control program, the LPM "provides consultation or expert advice to management." *Id.* Therefore, the LPM's duties meet several of the factors in 29 C.F.R. § 541.202(b) indicating the sufficient "exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. § 541.200(a)(3). Based on this review, it is our opinion that LPMs qualify for the administrative exemption under FLSA section 13(a)(1).

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Paul DeCamp
Administrator

* Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).